STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT APPELLATE DIVISION

MARK CAMARA)
)
VS.) W.C.C. 00-04233
)
THERMOCOR KIMMINS)

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter came to be heard before the Appellate Division on the petitioner/employee's appeal from the denial of his request for reimbursement for certain prescriptions. After review of the record and arguments of the parties, we deny the appeal and affirm the decision and decree of the trial judge.

Mr. Camara developed lead poisoning, as a result of his employment with the respondent, and was awarded weekly benefits for partial incapacity from October 9, 1996 to March 26, 1997, pursuant to a decree entered in W.C.C. No. 96-07994. On July 17, 2000, the employee filed the present petition requesting reimbursement in the amount of Seventy-seven and 86/100 ($77.86) Dollars for certain prescriptions. The petition was denied at the pretrial conference and the employee claimed a trial in a timely manner.

After conducting a trial, the judge determined that the medications were for treatment of asthma which was diagnosed on December 3, 1996, but never

deemed to be a work-related condition by the employer or the court. As such, the two (2) year limitation on filing a petition to establish that the employee's asthma was work related had expired, and the current petition was barred. The trial judge further noted that the employee had not presented any evidence to establish that the cost of the prescriptions was reasonable. The employee filed this appeal.

Rhode Island General Laws § 28-35-28(b) provides that factual findings of a trial judge are final unless the appellate panel finds them to be clearly erroneous. Only after making that determination may the Appellate Division conduct a *de novo* review of the record. Diocese of Providence v. Vaz, 679 A.2d 879 (R.I. 1996). After consideration of this matter, we cannot say that the trial judge was clearly erroneous in his findings of fact.

The employee submitted eight (8) reasons of appeal. The first three (3) reasons are general recitations which are totally lacking in specificity. They are summarily denied. Bissonnette v. Federal Dairy Co., 472 A.2d 1223 (R.I. 1984).

The fourth and fifth reasons of appeal allege that the trial judge failed to consider the effect of the payment of prescriptions in the past in determining liability. The employee further argues that reimbursement to the employee for prescriptions in the past was an admission of liability.

Based upon documents submitted to the court, the employee has two (2) previous work-related injuries. In an unappealed Pretrial Order entered in W.C.C. No. 96-07699 on December 18, 1996, it was found that the employee sustained

an injury to his left thumb on September 16, 1996, resulting in partial incapacity from September 17, 1996 and continuing. On January 21, 1998, a decree was entered in W.C.C. No. 96-07994 which found that the employee developed lead poisoning, due to exposure at work on October 9, 1996, resulting in partial incapacity from October 9, 1996 through March 26, 1997.

The petition before the court specifically requested reimbursement for two (2) prescriptions for Robitussin cough medicine at Twenty-eight and 93/100 ($28.93) Dollars each, and two (2) co-payments of Ten and 00/100 ($10.00) Dollars each. The employee testified that he has been taking Robitussin since 1996 to control coughing and that it was prescribed by Dr. Allen M. Dennison, his primary care physician. Dr. Dennison testified that he prescribed the Robitussin for symptoms of asthma. Mr. Camara asserted that the insurer had reimbursed him for this medication previously, but then suddenly stopped. He indicated that he also treats with and receives medication from Dr. Robert E. Miller, a neurotoxicologist, and Dr. Charles Johnson, an orthopedic surgeon.

Copies of two (2) checks from the insurer were admitted into evidence. One is dated September 25, 1999 and the other is dated November 3, 2000. Both are made payable to the employee. The November 2000 check has a notation on it stating "paid without prejudice." The September 1999 check states it is for "reimbursement of Rx." There is no other documentation or testimony in the record to explain exactly what these payments were for. The employee was still being monitored for the effects of lead poisoning and for his

left thumb. He treated with Dr. Dennison for a wide variety of complaints, including some related to the lead poisoning. The only evidence that the insurer previously paid for the Robitussin is the employee's own statement. This is insufficient to establish such a contention.

There is no evidence regarding the co-payments made by the employee for which he is seeking reimbursement. Two (2) receipts were introduced into evidence, but there is no information as to what service was rendered or even where or by whom. The employee indicated that he thought they were for blood work done at Landmark Medical Center, but there were no other bills or reports to substantiate that statement.

The employee needed to establish that the insurer had previously reimbursed the employee for the Robitussin, in order for the trial judge to weigh the payment as a factor in deciding whether the employee had proven that his asthma was work related. There is insufficient information in the record to arrive at such a conclusion. Therefore, the alleged previous payment cannot be considered an admission under R.I.G.L. § 28-35-9, because the employee did not prove what the payment was for. The trial judge was correct, in not according the payments any weight or consideration.

This same reasoning applies to the employee's sixth reason of appeal, in which he alleges that the payments tolled the statute of limitations. We refer to the above discussion in denying this reason as well. The initial diagnosis of asthma was made in December 1996. There was apparently some discussion

between the employee and Dr. Dennison that the condition may be related to exposure at work. A petition was not filed establishing asthma as a work-related condition. This petition for payment of medical bills related to the asthma was filed on July 17, 2000, well over two (2) years from the initial diagnosis. In order to obtain payment of medical bills related to the asthma, the employee must establish that the asthma is work related. Because the employee has not established that the statute of limitations was tolled because the insurer previously made payments specifically related to the asthma, this petition is barred by the statute of limitations.

The employee further argues that the trial judge improperly considered the deposition of Dr. Dennison which was part of the record of the prior case involving the lead poisoning. Counsel for the employer submitted the deposition to impeach the doctor's testimony in the current case. When the deposition was offered, counsel for the employee did not object to its admission and, in fact, requested that the entire file from the previous case be marked as an exhibit for the trial judge's consideration in this matter. (Tr. p. 22-23) Subsequently, on May 25, 2000, the parties signed a stipulation stating that the entire file in W.C.C. No. 96-4661 shall be marked as an employee's exhibit. Based upon this record, the employee has obviously waived any argument regarding the deposition.

For the reasons set forth above, the employee's reasons of appeal are denied and dismissed and the decree appealed from is affirmed.

In accordance with Sec. 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a copy of which is enclosed, shall be entered on

Healy and Connor, JJ. concur.

ENTER:

_____
Healy, J.

_____
Olsson, J.

_____
Connor, J.

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the petitioner/employee and upon consideration thereof, the appeal is denied and dismissed, and it is:

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on August 1, 2001 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

PER ORDER:

_____

ENTER:

_____
Healy, J.

_____
Olsson, J.

_____
Connor, J.

I hereby certify that copies were mailed to Stephen J. Dennis, Esq., and Diana E. Pearson, Esq., on

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